STATE OF MICHIGAN

COURT OF APPEALS

JARVIS ASSOCIATES, L.L.C.,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF YPSILANTI,

Defendant-Appellee.

UNPUBLISHED
November 25, 2008

No. 279225
Washtenaw Circuit Court
LC No. 02-000445-CZ

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff Jarvis Associates, L.L.C., appeals as of right a judgment for defendant Charter Township of Ypsilanti dismissing plaintiff's claim that defendant's zoning ordinance violated plaintiff's substantive due process rights, as well as an order granting partial summary disposition to defendant and dismissing plaintiff's regulatory takings claim. We affirm.

I. Facts and Procedural History

Plaintiff owns two parcels of contiguous property that are located on the southwest corner of Rawsonville Road and Martz Road in Ypsilanti Township, Washtenaw County, Michigan. Plaintiff purchased the first 15-acre parcel in May 1995 for $112,500 ($7,500 per acre). In November 1996, plaintiff purchased the second 15-acre parcel for $127,500 ($8,500 per acre). Plaintiff's total financial investment for both parcels therefore was $240,000. All of the property is subject to a light industrial use zoning classification (I-1), and plaintiff was aware of this fact when it purchased the property. Plaintiff purchased the first 15 acres to develop a self-storage facility, which it currently operates on a portion of the property. In 2001, plaintiff sold three of its 30 acres of property for approximately $100,000. The owners of the three acres currently run an asbestos recovery company on that property.

In 1996, plaintiff filed an application to rezone approximately 9.35 acres of its property from its light industrial zoning classification to a general business classification (B-3). However, defendant township was in the process of reviewing and updating its master plan, so plaintiff's zoning request was tabled at that time. In July 2001, plaintiff submitted a second application to rezone the 9.35 acres to a community business classification (B-2). The property plaintiff sought to have rezoned included 1,250.52 linear feet of frontage on Rawsonville Road and 320 linear feet of frontage on Martz Road.

The Ypsilanti Township Community and Economic Development Department recommended that defendant deny plaintiff's request for rezoning, observing that the property at issue was "located on a major thoroughfare with direct access to I-94[,]" that surrounding parcels were zoned and planned for industrial use, that there were three existing or planned commercial "nodes of activity" in the Rawsonville Road area, and that the requested rezoning did not conform to the township's Future Land Use plan. For similar reasons, the Ypsilanti Planning Commission and Washtenaw County Metropolitan Planning Commission also recommended that the township board deny plaintiff's rezoning request. Langworthy, Strader, LeBlanc & Associates, Inc., defendant's community planning consultants, also recommended that defendant deny plaintiff's rezoning request. The consultants cited the following reasons, among others, for its recommendation: the requested rezoning would contribute to a pattern of strip commercial development on Rawsonville Road, which was inconsistent with the desired industrial character of the area, the requested rezoning would limit the township's ability to maintain the integrity of Rawsonville Road as an industrial corridor, commercial development would require a greater level of public services than industrial development, and extensive strip commercial development would increase traffic congestion and limit the effectiveness of Rawsonville Road to carry traffic.

At its regular meeting on February 19, 2002, the township board voted unanimously to deny plaintiff's rezoning request. Thereafter, plaintiff filed suit against defendant township, alleging, in relevant part, that the township's refusal to rezone the property constituted a compensable regulatory taking of plaintiff's property and violated plaintiff's substantive due process rights. Defendant moved for summary disposition under MCR 2.116(C)(8) and (10), arguing that its refusal to rezone plaintiff's property did not amount to an unconstitutional taking and that plaintiff's substantive due process rights were not violated because the zoning classification of plaintiff's property advanced a reasonable governmental interest.

The trial court granted defendant's motion for summary disposition of plaintiff's takings claim under MCR 2.116(C)(10). In conducting its takings analysis, the trial court applied the "nonsegmentation" principle explained in *K & K Construction, Inc v Dep't of Natural Resources*, 456 Mich 570, 578-479; 575 NW2d 531 (1998) (*K & K I*), and included plaintiff's entire 30 acres as the "denominator parcel." The trial court concluded that although plaintiff had shown a "significant diminution in the value of the property as a whole . . . a disparity in value, or mere diminution of value, does not amount to a taking." However, the trial court found that there was a "genuine issue of fact concerning the reasonableness of the zoning regulation" and therefore denied defendant's motion for summary disposition of plaintiff's substantive due process claim.

The trial court conducted a bench trial on plaintiff's substantive due process claim. On June 19, 2007, the trial court entered an opinion and order granting judgment in favor of defendant. In ruling in favor of defendant, the trial court stated:

> Defendant's Master Plan outlined general long-term zoning goals to be carried out over a period of 15 to 20 years. One of the stated objectives was to continue to maintain and create space for new light industrial uses and to upgrade older industrial uses. The evidence showed that the light industrial classification was not unreasonably restrictive and, in fact, allowed a variety of uses, including office space. Under Defendant's plan, the evidence showed that nearby property

zoned for commercial use satisfactorily addressed the need for neighborhood commercial growth.

The Court finds that Plaintiff failed to demonstrate that, under the Defendant's Master Plan, the light industrial zoning classification as applied to Plaintiff's property is so arbitrary that it amounts to a "whimsical ipse dixit" and renders the land use regulation unreasonable. While Defendant's zoning plan may not be the best plan, it is a reasonable plan based on defined zoning goals and objectives. . . .

The Court did not find credible the expert testimony offered by Plaintiff that a light industrial classification is unreasonable simply because a significant portion of property subject to the zoning classification remains vacant for many years. The Court is not convinced that continued preservation of vacant land for a particular zoning use is necessarily an indictment of a zoning scheme such that it renders the regulation unreasonable. Defendant showed that the area surrounding Plaintiff's segment (Rawsonville corridor) was an appropriate area for light industrial development and that restricting commercial development in that area was a reasonable means of controlling traffic flow and avoiding traffic congestion. In addition, Defendant demonstrated that the absence of plans to "signalize" Martz and Rawsonville Roads would likely deter commercial development and require a significant investment in public utilities and services. Finally, Defendant demonstrated that adequate opportunities for commercial development are provided under its Master Plan.

II. Analysis

A. Regulatory Taking

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition and dismissing plaintiff's regulatory takings claim. Whether the government has effected a taking of property is a constitutional issue that this Court reviews de novo. *K & K Construction, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544; 705 NW2d 365 (2005) (*K & K II*). This Court's review of a trial court's grant of summary disposition pursuant to MCR 2.116(C)(10) is as follows:

> This Court reviews de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Downey v Charlevoix Co Rd Comm'rs*, 227 Mich App 621, 625; 576 NW2d 712 (1998). The pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties must be considered by the court when ruling on a motion brought under MCR 2.116(C)(10). *Downey*, *supra* at 626; MCR 2.116(G)(5). When reviewing a decision on a motion for summary disposition under MCR 2.116(C)(10), this Court "must consider the documentary evidence presented to the trial court 'in the light most favorable to the nonmoving party.'" *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 539; 620 NW2d 836 (2001), quoting

> *Harts v Farmers Ins Exchange*, 461 Mich 1, 5; 597 NW2d 47 (1999). A trial court has properly granted a motion for summary disposition under MCR 2.116(C)(10) "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). [*Clerc v Chippewa Co War Mem Hosp*, 267 Mich App 597, 601; 705 NW2d 703 (2005), remanded in part 477 Mich 1067 (2007).]

Plaintiff first argues that the trial court erred in applying the "nonsegmentation" principle and including all of plaintiff's property rather than only the 9.35 acres that plaintiff sought to have rezoned, in undertaking its takings analysis. The first step in a regulatory takings analysis is to determine the "denominator parcel," or which parcel or parcels of plaintiff's property are relevant to the taking inquiry. *K & K I*, *supra* at 578. The determination of "the 'denominator parcel' is important because it often affects the analysis of what economically viable uses remain for a person's property after the regulations are imposed." *Id.* In *K & K I*, the Supreme Court explained the process for determining the denominator parcel:

> One of the fundamental principles of taking jurisprudence is the "nonsegmentation" principle. This principle holds that when evaluating the effect of a regulation on a parcel of property, the effect of the regulation must be viewed with respect to the parcel as a whole. Courts should not "divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated." Rather, we must examine the effect of the regulation on the entire parcel, not just the affected portion of that parcel. [*Id.* at 578-579 (citations omitted).]

"Determining the size of the denominator parcel is inherently a factual inquiry." *Id.* at 580. In *K & K I*, the Supreme Court stated that while there is no single set of factors or test to ascertain the extent of the denominator parcel, factors that the court can consider include the extent of the plaintiff's ownership interest in the relevant parcels, the degree of contiguity of the parcels, the dates of acquisition, the extent to which the parcel has been treated as a single unit, the extent to which the protected lands enhance the value of the remaining lands, the zoning of the parcels, and other factors. *Id.* at 580, 585 n 10.

In granting summary disposition for defendant, the trial court properly applied the "nonsegmentation" principle and considered all of plaintiff's property as the denominator parcel in its takings analysis. "'As a general rule, a person's property should be considered as a whole when deciding whether a regulatory taking has occurred.'" *K & K II*, *supra* at 579, quoting 1 Rathkopf, Zoning and Planning, § 6.07(5), p 6-45. It was undisputed that plaintiff purchased two parcels of 15 acres each in separate transactions in 1995 and 1996. The evidence showed that plaintiff was the sole owner of the relevant parcels. Furthermore, the parcels were contiguous parcels. Plaintiff contends that it had separate development plans for each 15-acre parcel. According to plaintiff, it purchased the first 15 acres to develop a self-storage facility, and it purchased the second 15 acres with the expectation of developing it into a retail shopping center. However, both parcels were subject to the same light industrial zoning classification, and plaintiff was aware of the zoning classification when it purchased both parcels of property. Given that there is no single test or set of factors to ascertain the denominator parcel, the trial court did not err in focusing on the factors that were relevant under the circumstances. These

factors include the fact that the properties were contiguous and that both parcels were subject to the same zoning classification. The trial court properly applied the general rule that a person's property should be considered as a whole in determining whether there has been a regulatory taking and in including all of plaintiff's property as the denominator parcel in its takings analysis.

Plaintiff next argues that the trial court erred in granting defendant's motion for summary disposition of its takings claim. The United States and Michigan Constitutions both prohibit governmental taking of private property without just compensation. US Const, Am V; Const 1963, art 10, § 2. A taking may occur where a governmental entity exercises its police power through a regulation restricting the use of property. *Electro-Tech, Inc v HF Campbell Co*, 433 Mich 57, 68; 445 NW2d 61 (1989). In *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 130-131; 680 NW2d 485 (2004), this Court summarized the law of regulatory takings:

> [A] regulatory taking is one in which the government effectively "takes" a person's property by overburdening it with regulations. Land use regulations effectuate a taking in two general situations: (1) where the regulation does not substantially advance a legitimate state interest, or (2) where the regulation denies an owner economically viable use of his land. The second type of taking is further subdivided into two situations: (a) a "categorical" taking, where the owner is deprived of "all economically beneficial or productive use of land," or (b) a taking recognized on the basis of the application of the traditional "balancing test" established in *Penn Central Transportation Co v New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978). For a categorical taking, a reviewing court need not apply a case-specific analysis; instead, the owner should automatically recover for the taking of its property. . . . In regulatory takings other than categorical takings, the court must apply a "balancing test." With regard to this balancing test, a reviewing court must engage in an "ad hoc, factual inquiry," centering on three factors: (1) the character of the government's action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations. [Citations omitted.]

This case involves not a categorical taking, but a regulatory taking that requires application of the balancing test articulated in *Penn Central Transportation Co v New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978). The first element in *Penn Central* is the character of the government's action. "A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 US at 124. In this case, the nature of the government's action involves not a physical invasion by the government, but the government's enactment of a zoning ordinance and its denial of plaintiff's request to rezone a portion of its property. Zoning regulations are a classic example of land-use regulations that have been upheld even if they destroy or adversely affect recognized real property interests as long as the regulation promotes health, safety, morals or general welfare. *Id.* at 125; see also *Bevan v Brandon Twp*, 438 Mich 385, 390; 475 NW2d 37 (1991), amended 439 Mich 1202 (1991). Zoning regulations create an average reciprocity of advantage, which burdens and

benefits landowners relatively equally. *K & K II*, *supra* at 528 n 3, 530-531. The nature of the government action in this case, which involves application of a zoning regulation and does not involve a physical invasion by the government, mitigates against a finding of a compensable taking.

Regarding the second element of the *Penn Central* balancing test, the economic effect of the regulation on the property, the trial court concluded that although defendant's denial of plaintiff's rezoning request resulted in a significant diminution in value of the property, mere diminution in value did not constitute a taking. The trial court was correct that the mere diminution of property value by application of regulations, without more, does not amount to an unconstitutional taking. *Penn Central*, 438 US at 131; *Bevan*, *supra* at 402-403.

Plaintiff argues that defendant's denial of its rezoning request denied plaintiff economically viable use of its property. According to plaintiff, the trial court failed to compare the value of its property as zoned industrial and the value of the property if zoned commercial and disregarded the testimony of its appraiser that the value of the 9.35 acres was $2,000,000 if zoned commercial, whereas the value of the property if zoned for light industrial use was $325,000 (this computes to a 83.75 percent reduction in value). The appraiser further testified that the value of the 9.35 acres at issue zoned commercial and the balance of the property (approximately 20 acres) zoned industrial was approximately $2.7 million, while the value of the entire property zoned industrial was $1,050,000 (this computes to a 61.1 percent reduction in value). "[W]hether a regulation denies the owner economically viable use of his land requires at least a comparison of the value removed with the value that remains." *Bevan*, *supra* at 391. In this case, the relevant diminution of property value figure is 61.1 percent, as this represents the diminution in value if plaintiff's entire property, and not just the 9.35 acres that plaintiff sought to have rezoned, is considered the denominator parcel. Contrary to plaintiff's contention, the trial court's order and opinion granting partial summary disposition reveals that the trial court considered plaintiff's evidence regarding the diminution or comparison in value of plaintiff's property and concluded that the diminution in value was not sufficient to constitute a compensable taking. This conclusion was not erroneous. "'Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law[.]'" *Penn Central*, *supra* 438 US at 124, quoting *Pennsylvania Coal Co v Mahon*, 260 US 393, 413; 43 S Ct 158; 67 L Ed 322 (1922).

Plaintiff next argues that the trial court improperly engaged in a categorical takings analysis because it essentially concluded that anything less than a 100 percent diminution in property value could never constitute a compensable taking. Nothing in the trial court's order and opinion explicitly or implicitly requires plaintiff to establish a complete diminution in property value to establish a compensable taking. To the contrary, the trial court specifically recognized its obligation to engage in a *Penn Central* balancing analysis.

Plaintiff also argues that the trial court erred in relying on *Euclid v Ambler Realty Co*, 272 US 365; 47 S Ct 114; 71 L Ed 303 (1926), and *Hadacheck v Sebastian*, 239 US 394; 36 S Ct 143; 60 L Ed 348 (1915). In *Euclid*, the Supreme Court ruled that a 75 percent diminution in value did not amount to a taking; in *Hadacheck*, the Supreme Court ruled that an 87.5 percent diminution in value did not amount to a taking. In this case, based on the testimony of plaintiff's appraiser, the denial of plaintiff's request for rezoning diminished the value of plaintiff's property by 61.1 percent. The trial court cited *Euclid* and *Hadacheck* as examples of cases in

which the Supreme Court had not found takings when the diminution in property value was even greater. Nothing in the opinion indicates that the trial court relied on these cases as creating a numerical barrier to establishing a compensable taking. We further observe that in *Penn Central*, the Supreme Court cited both *Euclid* and *Hadacheck* as examples of cases in which a mere diminution in value did not constitute a taking.

Plaintiff next argues that the trial court erred in analyzing the evidence regarding the third *Penn Central* factor, which is the extent to which the regulation has interfered with distinct, investment-backed expectations. Although a person's knowledge of a regulatory enactment does not act as an absolute bar to a takings claim based on the regulation, a "key factor" in determining whether a regulation has interfered with investment backed expectations "is notice of the applicable regulatory regime[.]" *K & K II*, *supra* at 555. Plaintiff was aware, when he purchased both 15-acre parcels of property, that it was zoned light industrial. Such notice "should . . . be taken into account" and "does . . . shape the analysis of whether plaintiff's expectations were reasonable." *Id.* at 555, 557. Plaintiff described its plans for the property if it were rezoned as follows: "We would love to attract a restaurant on the corner or a CVS Drugstore, Walgreens, a major drugstore, a bank- a drive-through bank, a restaurant, a hardware store, nail shops, Mom and Pop stores, pizza places, restaurants, travel agencies and . . . [b]arber shops, beauty salons." In this case, plaintiff purchased the two 15-acre lots for a total investment of $240,000, and thereafter sold three of the 30 acres for $100,000. Based on plaintiff's knowledge of the zoning of the property as light industrial, it was not reasonable for him to plan to use the property for commercial uses. Thus, the effect of defendant's denial of plaintiff's request for rezoning on plaintiff's reasonable, investment-backed expectations weighs against the conclusion that a compensable taking occurred.

In sum, for all the reasons stated above, under the factors articulated in *Penn Central*, there is no genuine issue of material fact regarding whether a compensable taking occurred when defendant denied plaintiff's request for rezoning. The trial court did not err in granting summary disposition of plaintiff's takings claim.

B. Substantive Due Process

The trial court dismissed plaintiff's substantive due process claim following a bench trial. There is no single standard of review that applies to zoning cases, which often present questions that are a mix of law and fact. *Macenas v Village of Michiana*, 433 Mich 380, 394-395; 446 NW2d 102 (1989). This Court reviews the trial court's factual findings in a bench trial for clear error and reviews de novo the trial court's conclusions of law. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with the definite and firm conviction that a mistake was made. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 130; 737 NW2d 782 (2007).

Both the Michigan and United States Constitutions guarantee that no person shall be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17. A plaintiff who alleges an unconstitutional taking as a result of a zoning ordinance may also challenge the validity of the zoning ordinance as a violation of substantive due process. *Dorman v Clinton Twp*, 269 Mich App 638, 650; 714 NW2d 350 (2006). The essence of a claim of a violation of substantive due process is that the government may not deprive a person of liberty or property by an arbitrary exercise of power. *Landon Holdings, Inc v*

Grattan Twp, 257 Mich App 154, 173; 667 NW2d 93 (2003). A zoning ordinance violates due process if it is not reasonable. *Id.* A zoning ordinance is unreasonable if it does not advance a reasonable governmental interest or if it arbitrarily and capriciously excludes other types of legitimate land uses from the subject property. *Kropf v Sterling Heights*, 391 Mich 139, 158; 215 NW2d 179 (1974). A zoning ordinance is presumed valid; the burden is on the party challenging the ordinance to establish that the ordinance has no real or substantial relation to public health, morals, safety, or general welfare. *Bevan*, *supra* at 398. A zoning ordinance violates substantive due process if it is an arbitrary fiat, a whimsical *ipse dixit*, and there is no room for a legitimate difference of opinion concerning its reasonableness. *A & B Enterprises v Madison Twp*, 197 Mich App 160, 162; 494 NW2d 761 (1992).

In denying plaintiff's request for rezoning, defendant relied in part on the fact that rezoning the property commercial was not consistent with the future land use designation of the property as industrial in the master plan and that there was adequate land available for commercial development in the master plan. Plaintiff asserts that defendant's master plan is unreasonable because there is a lack of demand for and excess supply of industrial property in Ypsilanti Township based on evidence projecting a decrease in manufacturing, transportation, communication and utility jobs in Ypsilanti Township. Plaintiff asserts that the trial court's conclusion that the zoning of its property as light industrial was reasonable disregards evidence plaintiff presented at trial that the Southeast Michigan Council of Governments (SEMCOG) projected a 43 percent drop in manufacturing jobs in Ypsilanti Township between 2000 an 2030, as well as evidence of a substantial decrease in the transportation, communication and utility sectors within Ypsilanti Township.

Plaintiff's argument is not persuasive. Plaintiff's reliance on the SEMCOG statistics for the conclusion that there is an excess supply of industrial property in the township assumes that the only uses permitted on property zoned light industrial in Ypsilanti Township are manufacturing, transportation, communication and utility uses. In fact, myriad other uses are permitted on land in Ypsilanti Township that is zoned light industrial. Other permissible uses include research, design and pilot or experimental product development uses, warehousing and wholesale establishments, tool, die and machine shops, laboratories, central dry cleaning plants, freight terminals, building contractors and storage facilities, municipal uses, commercial kennels, greenhouses, farming, and trade or industrial schools. The uses permitted for light industrial zoned property also include special conditional uses, such as auto engine, body repair and undercoating shops, banks, storage buildings, and indoor recreational facilities, such as bowling alleys, archery ranges, tennis or racquet ball courts, skating rinks, athletic fields, swimming pools, and health and fitness centers. In light of all these other permissible uses of property zoned industrial, the SEMCOG statistics projecting a drop in manufacturing, transportation, communication and utility jobs in the township do not establish, as plaintiff contends, that the township's master plan unreasonably includes excess industrial property.

Plaintiff also contends that the master plan is arbitrary and capricious because at the rate it is developing its industrial land, it would take 600 years for the township to utilize all the land it has zoned industrial. In support of its argument, plaintiff relies on this Court's unpublished opinion in *Grand/Sakawa Macomb Airport, LLC v Macomb Twp*, unpublished opinion per curiam of the Court of Appeals, issued June 7, 2005 (Docket No. 256013), in which a panel of this Court affirmed the trial court's holding that the zoning ordinance in question was arbitrary

and capricious and that the trial court did not clearly err in finding as a matter of fact that it would take between 37 and 40 years for the township to absorb the land master planned as industrial. Plaintiff's reliance on *Grand/Sakawa* is unpersuasive for two reasons. First, it is an unpublished opinion, and unpublished opinions are not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1). Second, this Court did not rule that the rate at which a township could absorb land zoned for industrial was a factor to consider in determining the reasonableness of a township's master plan; rather, this Court simply found that the trial court did not clearly err in finding as a matter of fact that it would take between 37 and 40 years to absorb the land master planned in Macomb Township as industrial.

Furthermore, evidence at trial established that other townships with property along the I-94 corridor had zoned an even greater percentage of their property industrial. At trial, Jeffrey Purdy, a planning expert employed by Langworthy, Strader, LeBlanc & Associates, Inc., testified that Ypsilanti and VanBuren Townships and the City of Romulus all exist along the I-94 corridor with access to Metro and Willow Run airports, and all have a history of industrial development. According to Purdy, of the three communities, Ypsilanti Township actually had the lowest percentage of land under industrial use and planned for industrial use. Ypsilanti Township used only five percent of its property for industrial purposes, while Van Buren Township used eight percent of its property for industrial purposes, and the City of Romulus used ten percent of its property for industrial uses. Ypsilanti Township also had the lowest percentage of its property planned for industrial uses, with 12 percent of its land planned for industrial use, while Van Buren Township had 18 percent and the city of Romulus had 21 percent planned for industrial use. Given that defendant township's neighbors along the I-94 corridor have an even greater percentage of land being used for industrial purposes and planned for industrial purposes than defendant, the percentage of land used and planned for industrial uses in Ypsilanti Township is not unreasonably arbitrary and capricious.

Plaintiff also argues that the master plan is arbitrary and capricious because the goals and objectives regarding industrial growth fail to reference any specific data and the master plan contains no industrial job projections and lacks information or methodology to support a buildout of industrial land in the township. Purdy explained at trial that the goals and objectives of the master plan were developed through a public workshop that involved 300 township residents. The master plan includes a summary of the comments received at this public hearing. Furthermore, Purdy's testimony shows that defendant was aware of and "had great concerns about the decline in manufacturing jobs" in the township, but "didn't want to start significantly reducing the amount of industrial land within the Township which would limit the capabilities of the Township to bring new industry to the community." Even if the master plan itself does not refer to specific data regarding industrial jobs and growth, Purdy's testimony indicates that the township considered such data in making its determinations regarding land use. According to Purdy: "We took data that was available, existing land use inventory information that was available from SEMCOG and Washtenaw County. And we did an update to those existing land use maps, working again with the Township Engineer and working with the Township's geographic information system files to update the land use." Furthermore, Purdy asserted that in establishing the master plan, "one of the things that we looked at was the amount of industrial development that was occurring within the township." Purdy also testified regarding factors that influence industrial land uses and stated that such factors included access to I-94, since I-94 is an industrial corridor for the region, as well as access to Metro Airport and Willow Run Airport.

Purdy also noted that there were adjustments made in the allocation of land uses between industrial uses and commercial uses in that defendant reduced the amount of industrial land within the Township and converted some industrial land to residential and commercial. Thus, the evidence does not support plaintiff's contention that defendant's master plan was completed without regard to data and statistics, as plaintiff suggests.

Plaintiff also argues that the trial court erred in making a finding of fact that rezoning plaintiff's property would negatively impact traffic on Rawsonville Road when the evidence demonstrated that defendant had zoned 80 acres adjacent to plaintiff's property commercial and planned to develop a large-scale commercial development on the property. According to plaintiff, the 80-acre commercial development proposed by defendant had far greater potential to negatively impact traffic on Rawsonville Road than plaintiff's 9.35-acre parcel. Plaintiff's argument in this regard oversimplifies defendant's decision to zone the 80-acre parcel commercial and fails to take into account defendant's reasons for its zoning decision in this regard. In its master plan, the township noted that "Rawsonville Road, which is the border line between Ypsilanti Township and Van Buren Township, has become a major thoroughfare for traffic to and from the [I-94] freeway." The township has planned the 80-acre commercial development south of plaintiff's property, at the intersection of Rawsonville and Bemis roads. The township sought a review of plaintiff's rezoning request from consultants Langworthy, Strader, LeBlanc & Associates, Inc. In its report, the consultants explained why the 80-acre site south of plaintiff's property was designated commercial:

> The site is oriented to have primary access from Bemis Road with secondary access to Rawsonville Road. This will allow the majority of traffic from surrounding residential areas to access the center from Bemis Road, which is an east/west road. By doing so, it will minimize the traffic impact on Rawsonville Road, which is the only north/south road connecting this portion of the Township with I-94 and the northern areas of the Township. Providing a community commercial center with primary access to Bemis Road will create more of an east-west traffic flow and minimize the addition of congestion to north south routes, which is the current pattern of traffic flow in the Township.

The township's consideration of traffic flow and minimizing traffic congestion on Rawsonville and promoting access to I-94 provide a reasonable basis for the township's decision to zone the 80 acres south of plaintiff's property as commercial and deny plaintiff's request to rezone its 9.35 acres along Rawsonville Road to a commercial designation.

Furthermore, it was reasonable for the trial court to deny plaintiff's request for rezoning because of the lack of infrastructure to support such a zoning change. Defendant township stated in its master plan that one of the factors it would consider in addressing any request for rezoning is whether there was "sufficient public infrastructure (street, sewer and water capacity) to accommodate the host of uses allowed under the requested zoning classification[.]" According to Purdy, property designated commercial generates more traffic. Purdy further testified that the township had given the intersection at Martz and Rawsonville roads a grade "F", which is the worst grade for intersection operation, because the alignment of the intersection created left-turn conflicts. Rezoning would have required the addition of a signal at Rawsonville and Martz roads and because of the alignment problems with the intersection, one or both of the roads would have

needed to be realigned to fix the intersection. The lack of infrastructure therefore also supports defendant's denial of plaintiff's rezoning request.

Plaintiff finally argues that the zoning of its property as light industrial arbitrarily and unreasonably excluded other types of land uses. As stated above, defendant's zoning ordinance is presumed valid, and plaintiff had the burden of establishing that the ordinance has no real or substantial relation to public health, morals, safety, or general welfare. *Bevan*, *supra* at 398. The fact that plaintiff was not able to use the property for a commercial use does not render it unreasonable. A zoning ordinance is unreasonable if it does not advance a reasonable governmental interest or if it arbitrarily and capriciously excludes other types of legitimate land uses from the subject property. *Kropf*, *supra* at 158. There was sufficient evidence to support the trial court's conclusion that "[p]laintiff failed to meet its burden of proving that the zoning regulation violates substantive due process[.]" The zoning classification of plaintiff's property advanced the legitimate and substantial interest of defendant in planning for industrial development and employment and in maintaining the safety of the I-94 corridor by ensuring the free flow of traffic and lack of traffic congestion. Rezoning plaintiff's 9.35 acres to a commercial classification would have increased traffic and caused traffic congestion along the I-94 corridor. This would have caused problems with access to I-94 and Metro and Willow Run airports. Furthermore, there was a lack of infrastructure to support a commercial zoning of plaintiff's property. Rezoning the property would have required defendant to add a traffic signal at Rawsonville and Martz roads and to realign the intersection. There was also a lack of public utility service to the property at the time plaintiff sought rezoning, so utilities would have had to be extended to the property. In addition, defendant township had planned other areas of commercial development, including one large commercial area that was planned south of plaintiff's property near the intersection of Rawsonville and Bemis Roads.

The reasonableness of defendant township's denial of plaintiff's rezoning request is underscored by the fact that, for reasons articulated more fully above, the Ypsilanti Township Community and Economic Development Department, the Ypsilanti Planning Commission, and the Washtenaw County Metropolitan Planning Commission all recommended that the Ypsilanti Township Board deny plaintiff's rezoning request. Although plaintiff could not use the property for commercial uses, plaintiff was permitted to use the property for myriad other uses, as well as numerous special uses. The zoning ordinance substantially advanced defendant township's interest in planning for industrial development and ensuring a lack of traffic congestion along the I-94 corridor; the zoning ordinance did not arbitrarily and capriciously exclude other types of legitimate uses of plaintiff's property.

III. Holding

For the reasons articulated above, the trial court properly dismissed plaintiff's substantive due process and regulatory takings claims.

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis